IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3399 of 2007()

CRIME NO. 102/06 OF S. BATHERY EXCISE RANGE
CP.67/2007 of JUDL.MAGISTRATE OF FIRST CLASS, SULTHANBATHERY

.....

PETITIONER: 2ND ACCUSED:

JOY @ MATHEW JOSEPH, S/O. JOSEPH,
AGED 60, PULICKAL HOUSE, THALAPPALAM,
ERATTUPETTA POST, ERATTUPETTA VILLAGE,
MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: COMPLAINANT/STATE:

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1. EXCISE INSPECTOR, S.BATHERY.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3399 of 2007

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Dated this the 12th day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 55(a) of the Kerala Abkari Act. The petitioner was not arrested and has not so far been released on bail at the crime stage or thereafter. Investigation is complete. Final report has already been filed. Cognizance has been taken. Summons has been issued by the learned Magistrate under Section 204 Cr.P.C.

2. According to the petitioner he is absolutely innocent. His non-appearance before the learned Magistrate earlier was not wilful, but was due to reasons beyond his control. He did not have any knowledge of such requirement of appearance. Eventhough summons has now been issued against the petitioner, he apprehends that when he surrenders his application for bail may not be considered by the learned Magistrate on merits, in

accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate under Section 438 and/or under 482 Cr.P.C.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decisions in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22) and **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must

proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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